



Institute on
Statelessness and
Inclusion

LAWYERS FOR
HUMAN RIGHTS

Making Rights Real



southern african
nationality
network

**Institute on Statelessness and Inclusion,
Southern African Nationality Network &
Lawyers for Human Rights**

Joint Submission to the Human Rights Council at the 35th
Session of the Universal Periodic Review

(Third Cycle, January 2020)

Kingdom of Lesotho

July 2019

Institute on Statelessness and Inclusion, Southern African Nationality Network and Lawyers for Human Rights

Joint Submission to the Human Rights Council at the 35th Session of the Universal Periodic Review

Lesotho

Introduction

1. The Institute on Statelessness and Inclusion (ISI), the Southern African Nationality Network (SANN) and Lawyers for Human Rights (LHR) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Lesotho.
2. ISI¹ is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 40 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 34th UPR Sessions.
3. LHR is a South African human rights organisation committed to social justice activism and strategic public interest litigation. LHR is currently the coordinator of the Southern African branch of the Citizenship Rights in Africa Initiative (CRAI) network. In 2011, LHR launched the Statelessness Project as part of the Refugee and Migrant Rights Programme. LHR provides direct legal services to stateless persons; engages government on the need for legal reform to prevent and reduce statelessness; raises awareness on the rights of stateless people; and advocates for accession to the 1954 and 1961 UN statelessness conventions.²
4. SANN is a collective of civil society organisations, individuals and networks working towards universal access to the right to a nationality and prevention of statelessness in Southern Africa. The motto “Freedom in Belonging” underscores the belief that without belonging concretised by formal nationality, African individuals and communities can never be free. The network aspires to collaborate to improve data and statistics on statelessness in Southern Africa; advocate for universal access to nationality and birth registration; advocate for the adoption of the draft African Union *Protocol on the Specific Aspects on the Right to a Nationality and the Eradication of Statelessness in Africa*; improve access to individual legal assistance to ensure nationality rights for all Africans.³

¹ For more information about the Institute on Statelessness and Inclusion, see: www.institutesi.org.

² For more information about Lawyers for Human Rights, see : www.lhr.org.za.

³ For more information about SANN, see: www.sann.africa.

5. This submission will focus on the following challenges and concerns relating to every person's right to acquire nationality in Lesotho:
 - I. Difficulty in accessing birth registration and /or documentation for children born in Lesotho;
 - II. The passing on of citizenship for only one generation born outside of the country;
 - III. Challenges related to acquisition of citizenship of stateless children;
 - IV. Gender discrimination and discrimination based on marital status of parent.

Previous UPR of Lesotho under the First and Second Cycle

6. Lesotho was previously reviewed during the 8th and 21st and sessions of the UPR, in 2010 and 2015 respectively. During the first cycle, Lesotho received two recommendations from Canada to include in the Constitution and other legislation, a provision prohibiting discrimination against women in matters such as adoption, marriage, divorce, devolution of property, burial and death. These recommendations were noted by Lesotho. During the second cycle, Lesotho received a recommendation by Latvia to ensure that "*birth registration is effectively implemented and enforced by allocating sufficient human and financial resources to the National Identity and Civil Registry Department to promote the effectiveness of birth registration systems and processes*". Mexico made the recommendation to "*take measures to ensure the universal registration of births, including through the simplification of necessary requirements and the removal of costs*". Both recommendations were accepted by Lesotho.

Lesotho's International obligations

7. Lesotho acceded to the *1954 Convention on the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* on 24 September 2004. These conventions provide for international obligations to protect the right to a nationality and protect the rights of stateless persons.
8. In addition to the statelessness conventions, Lesotho has also acceded to the *International Covenant on Civil and Political Rights* which provides under Article 24(2-3) that every child shall be registered immediately⁴ and that every child has a right to a nationality.⁵ On 9 September 1992, Lesotho further acceded to *the International Covenant on Economic, Social and Cultural Rights* which contains articles protecting categories of persons from discrimination.⁶

⁴ Article 24(2) "International Covenant on Civil and Political Rights" Adopted by the General Assembly of the United Nations on 19 December 1966.

⁵ Article 24(3) "International Covenant on Civil and Political Rights" Adopted by the General Assembly of the United Nations on 19 December 1966.

⁶ Article 2(2) provides that States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex,

9. Lesotho has also signed and ratified the *Convention of the Rights of the Child*. Article 7 provides for the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality.⁷ Article 8 obliges States Parties to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law.⁸ Lesotho is also party to the *Convention on the Elimination of All Forms of Discrimination against Women*, Article 9 of which, protects the equal nationality rights of women.
10. Lesotho also acceded to the *International Convention on the Elimination of All Forms of Racial Discrimination* on 4 November 1971. Article 5(d)(iii) encompasses the enjoyment of the right to nationality without discrimination.⁹ The Kingdom has further acceded to the *Convention on the Rights of Persons with Disabilities* on 2 December 2008, providing for the right to a nationality under Art. 18(i)(d).¹⁰ Furthermore, the right to a nationality is included in Article 15 of the Universal Declaration on Human Rights.
11. On a regional level Lesotho ratified the African Charter on the Rights and Welfare of the Child in 1999, which provides for the right to a name and nationality for every child in its Article 6.¹¹ The Children’s Protection and Welfare Act, enacted in 2011 incorporated both the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child into the national framework.¹²
12. During the reporting period, Lesotho was reviewed by two UN Treaty Bodies, the Committee on the Rights of Migrant Workers, and the Committee on the Rights of the Child,¹³ in 2016 and 2018 respectively. Both made recommendations related to nationality and the right to nationality.
13. The Committee on the Rights of Migrant Workers stated its concern that,

“as the number of Basotho migrant workers migrating to South Africa increases, children born to these migrant workers are at risk of statelessness as there is no mechanism to ensure systematic consular birth registration”. It recommended Lesotho *“(a) Intensify efforts, including in the context of the Lesotho Special Permit scheme and the provision of consular services, to ensure that all children of Basotho migrant workers abroad, particularly in South Africa, are registered and issued with personal identity documents, in line with target 16.9 of the Sustainable Development Goals; (b) Ensure that its consular offices in South Africa raise awareness about the importance of birth registration among Basotho migrant workers and members of their families, especially those in an irregular situation; (c) Intensify efforts for the*

language, religion, political or other opinion, national or social origin, property, birth or other status.

“International Covenant on Economic, Social and Cultural Rights”

⁷ Article 7 “Convention on the Right of a Child” Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989”.

⁸ Article 8 “Convention on the Right of a Child” Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989”.

⁹ Article 5 (iii) “International Convention on the Elimination of All Forms of Racial Discrimination” Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965.

¹⁰ Article 18(i)(d) “Convention on the Rights of Persons with Disabilities”

¹¹ Article 6 “African Charter on the Rights and Welfare of the Child”

¹² “Children’s Protection and Welfare Act”

¹³ It should be noted that the submitters of this report also made a submission to the CRC, in 2017, which is accessible here: http://www.institutesi.org/CRC_Lesotho_2017.pdf

implementation of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness".¹⁴

14. The Committee on the Rights of the Child, "taking note of target 16.9 of the Sustainable Development Goals, on providing legal identity for all, including birth registration", recommended that Lesotho:

"(a) Strengthen the use of mobile birth registration teams to cover remote communities and extend the birth registration process to hospitals throughout the country; (b) Strengthen its efforts to implement birth registration procedures immediately after birth and ensure the issuance of birth certificates, in particular at the community level; (c) Remove penalties for late birth registration; (d) Adopt legislative measures to prevent discriminatory rules, and provide safeguards in respect of the right to acquire nationality for all children in the State party, including foundlings, who would otherwise be stateless; (e) Collect data on stateless children in the State party; (f) Launch extensive awareness-raising programmes about the importance of birth registration and registration processes; (g) Seek technical assistance from the Office of the United Nations High Commissioner for Refugees (UNHCR) and UNICEF, among others, in the implementation of these recommendations".

National Law

15. The 1993 Constitution of Lesotho includes contains some important provisions on human rights, right to nationality and safeguards against statelessness.¹⁵ Articles 4 (1) (a) and (n) and (o) of the Constitution protect fundamental human rights and freedoms and Article 32 protects the rights of children and young persons:

Article 4. Fundamental human rights and freedoms

"(1) Whereas every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms, that is to say, to each and all of the following:

(a) the right to life;

(n) freedom from discrimination;

(o) the right to equality before the law and the equal protection of the law."

Article 32. Protection of children and young persons

"Lesotho shall adopt policies designed to provide that –

¹⁴ Report of the Working Group on the Universal Periodic Review: Lesotho (2015): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/95/PDF/G1507695.pdf?OpenElement>.

¹⁵ To read the Constitution of Lesotho, see <http://www.unesco.org/education/edurights/media/docs/5f117d45be0d3d8ed8e573ee1db7db551ad68565.pdf>.

(a) Protection and assistance is given to all children and young persons without any discrimination for reasons of parentage or other conditions”

16. In addition, both the Constitution and Citizenship Order have a *jus soli* provision which provides the right to nationality for anyone born on the territory of Lesotho.¹⁶ These provisions also include a safeguard against statelessness by ensuring citizenship for those who do not qualify for citizenship but would otherwise be stateless. These provisions guarantee the right to a nationality for all children born in Lesotho.

Article 38. Persons born in Lesotho after the coming into operation of the Constitution

(1) Subject to the provisions of subsections (2) and (3), every person born in Lesotho after the coming into operation of this Constitution shall become a citizen of Lesotho.

(2) Save as provided in subsection (3), a person shall not become a citizen of Lesotho by virtue of this section if at the time of his birth neither of his parents is a citizen of Lesotho, and -

(a) one or both of his parents possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Lesotho; or

(b) one or both of his parents is an enemy alien and the birth occurs in a place then under occupation by the enemy.

*(3) A person born in Lesotho on or after the coming into operation of this Constitution who is disqualified to become a citizen of Lesotho by virtue of subsection (2) of this section shall become a citizen of Lesotho **if he would otherwise become stateless.***

Section 5 of the Lesotho Citizenship Order of 1971:

(1) Subject to the provisions of subsection (2), every person born in Lesotho after the 3rd day of October, 1966 shall be a citizen of Lesotho with effect from the date of his birth.

(2) A person shall not become a citizen of Lesotho by virtue of this section if at the time of his birth - (a) neither of his parents is a citizen of Lesotho and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Lesotho; or (b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

(3) Unless he would thereby become stateless, a person born in Lesotho after the 3rd day of October, 1966 shall not become a citizen of Lesotho at the date of his birth by virtue of this section if his father is not on that date a Commonwealth Citizen.

¹⁶ Chapter IV of the Constitution of Lesotho 1993 and Part II of the Lesotho Citizenship Order No. 16 of 1971. To read the Citizenship Order, see <http://www.refworld.org/pdfid/4c5849ad2.pdf>.

Section 6 of the Citizenship Order states that:

“A person born outside Lesotho after the 3rd day of October, 1966 shall be a citizen of Lesotho with effect from the date of his birth if his father is a citizen of Lesotho at that date otherwise than by virtue of section 23(2) of the Lesotho Independence Order 1966.”

Section 7 states that:

“Any woman who after the 3rd day of October 1966 married or marries a citizen of Lesotho shall be entitled upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Lesotho”

17. **The Children’s Protection and Welfare Act**,¹⁷ in line with the CRC, protects the acquisition of nationality and birth registration for all children born in Lesotho, including orphaned and vulnerable children. It also protects against discrimination and stresses that a child’s best interest shall be the primary consideration in any matter concerning a child.

Article 7 – Identity of child – a child has a right from birth, to a decent name and to acquire a nationality;

Article 8 – Right to registration – A child has a right to be registered within three months of birth whether born alive or still born;

Article 9 – Right of orphaned and abandoned and vulnerable children to register – (1) Orphan and vulnerable children have a right to registration.

Difficulties in accessing birth registration

18. Lesotho is to be commended for its efforts towards strengthening the registration system. The co-submitting organisations are aware that a considerable level of awareness has also been created through nation-wide sensitisation workshops, distribution of Information, Education and Communication (IEC) material, radio programmes, and that these are all ongoing activities.
19. The Registration of Births and Deaths Act and the Children’s Protection and Welfare Act, from 1973 and 2011 respectively,¹⁸ stipulate that every child is registered a birth at within three months of birth. This is mandatory, by law. The duty of civil registration is placed on the Department of National Identity and Civil Registry.¹⁹
20. In 2014, Lesotho had extremely low levels of registered births, with a reported 43.3% (40.1% in rural areas).²⁰ This is the most recent percentage available, which makes it

¹⁷ The Children’s Protection and Welfare Act No 7 of 2011. To read the Act, see:

<http://jafbase.fr/docAfrique/Lesotho/children%20act%20lesotho.pdf>.

¹⁸ [Registration of Births and Deaths Act \(1973\)](#); [Children’s Protection and Welfare Act \(2011\)](#);

¹⁹ <https://data.unicef.org/resources/crvs/lesotho/>

²⁰ Data collected by the World Bank (2014): <https://data.worldbank.org/indicator/SP.REG.BRTH.ZS?locations=LS>

difficult to estimate how Lesotho has improved this percentage over the reporting period.

21. This low percentage has a number of possible causes, although further research on it is needed. Births in rural areas are less likely to be registered, with a percentage of 40.1% in 2014.²¹ While birth registration is free, the penalties levied for late registration of birth is a major disincentive for parents once it is not done after three months. Moreover, in the absence of parents, those registering births often do not know which documents to produce to facilitate birth registration. Another issue is that, while computerisation of birth registration offers potential, the registration services are often brought to a halt when the computers are broken.²²
22. Finally, there is need for provision of free services including outreach facilities in the remotest areas of the country to especially encourage poor communities and vulnerable groups to exercise their rights to registration at birth.²³

Naturalisation of stateless persons and foundlings

23. Lesotho is to be commended for the 2018 amendment of its Constitution to include dual citizenship.²⁴ However, a number of issues remain to be resolved in order for the right to nationality to be fully protected.
24. The Citizenship Order, section 10 (1)(a) and (b) makes provision for a stateless person to apply for Lesotho Citizenship at the age of 18 but requires that the stateless person resided lawfully in Lesotho prior to his application as a condition. This is often an impossible requirement, as stateless persons often do not have any enabling documents and are not in a position to acquire legal status in any country in the absence of a special consideration such as a statelessness determination mechanism (procedure) to document such person.
25. Application may be made to the Minister as in the form set out in the Second Schedule, for registration as a citizen of Lesotho by a person who:
 - a. *“Has attained the age of eighteen years and who is stateless; and*
 - b. *Is lawfully sojourning [staying] in Lesotho and has since the 4th day of October, 1966, or since such earlier date as the Minister may order (and the Minister is hereby empowered so to order), been lawfully sojourning [staying] there for a period of three years immediately preceding the application; and*
 - c. *Has neither been convicted of an offence against the security of Lesotho nor been sentenced in any country to imprisonment for a term of five years or more in respect of a criminal offence that would, if it had been committed in Lesotho have been likewise punishable; and*
 - d. *Is willing to take the oath of allegiance; and*

²¹ World Bank (2014): <https://data.worldbank.org/indicator/SP.REG.BRTH.RU.ZS?locations=LS/>

²² Eastern and Southern Africa Conference on Universal Birth Registration “Improving Services to Protect the Rights of the Most Vulnerable Children” (2005) Mombasa, Kenya pg 2.

²³ Eastern and Southern Africa Conference on Universal Birth Registration “Improving Services to Protect the Rights of the Most Vulnerable Children” (2005) Mombasa, Kenya pg 2.

²⁴ <https://citizen.co.za/news/news-africa/2044388/lesotho-amends-constitution-to-allow-for-dual-citizenship/>.

e. *Intends, if his application is granted, to reside permanently in Lesotho, or to establish his domicile of choice in Lesotho, subject to necessary absences from Lesotho in the course of his employment or self-employment.”*

26. It is important to note that there are no provisions for granting citizenship to foundlings in either the Constitution or the Citizenship Order and as a consequence children found in Lesotho and who appear to have been born in Lesotho are not afforded the right to a nationality at birth.
27. Children who are stateless will not have access to citizenship until after they attain adulthood. Living your entire childhood as a stateless person is contrary to the principle of the best interests of the child and can undermine the child’s access to various human rights including access to education and healthcare.
28. It should also be noted that the requirement for stateless persons to have legal status in Lesotho for at least three years before making an application for nationality can prove difficult, as it often hard for stateless persons to get a residence permit in Lesotho.

Citizenship by descent in the second generation born outside of Lesotho

29. Two of the main issues concerning the right to nationality in Southern Africa include a failure to integrate historical and contemporary migrants (whether forced or voluntary) and their descendants, and discrimination - in law or in fact - on the basis of gender, race or ethnicity (whether against migrants, or people who have never moved).²⁵
30. According to Article 39 of the Constitution of Lesotho, a Lesotho citizen born abroad cannot pass on their nationality to their children who are also born abroad, a situation which could lead to statelessness if the child is not recognised by the State in which the child is born in.

Gender discrimination and discrimination based on marital status of parent.

31. Article 40 of the Constitution states that:

“(1) Any woman who immediately before the coming into operation of this Constitution [in 1993], is or has been married to a person- (a) who continues to be a citizen of Lesotho by virtue of section 37 of this constitution; or (b) who having died before the coming into operation of this Constitution would, but for his death, have continued to be a citizen of Lesotho by virtue of that section, shall be entitled, upon making application and upon taking the oath of allegiance, to be registered as a citizen of Lesotho. (2) Any woman who, after the coming into operation of this Constitution,

²⁵ Manby B (2011) “Statelessness in Southern Africa” Briefing paper for UNHCR Regional Conference on Statelessness in Southern Africa Mbombela (Nelspruit) also available at <https://www.refworld.org/pdfid/50c1f9562.pdf>.

marries a citizen of Lesotho shall be entitled, upon making application and upon taking the oath of allegiance, to be registered as a citizen of Lesotho.”

32. This makes Lesotho one of the 50 countries world-wide where women equal rights with men in their ability to acquire, change or retain their nationality, or to confer nationality on non-national spouses.²⁶ In the context of Lesotho, this Article does not grant men who marry a woman with Lesotho nationality access to that citizenship, as it does for a woman who marries a Lesotho citizen. This gender discrimination can lead, as the Global Campaign on Equal Nationality Rights, to other issues, such as threatened family unity, and the lack of economic opportunities and poverty of the husband. For example, when women are unable to confer nationality on their spouses, their husbands may be denied work permits and must often pay expensive residency permits.²⁷
33. In April 2013, the African Commission on Human and People’s Rights (African Commission) passed Resolution 234 on the Right to Nationality, which reaffirmed the equal rights of men and women with respect to nationality.²⁸ In the June session of 2016, the Human Rights Council adopted a resolution on *“women’s equal nationality rights in law and in practice”*, with Lesotho as a co-sponsor as part of the Group of African States, which among others *“urges States to take immediate steps to reform nationality laws that discriminate against women by granting equal rights to men and women to confer nationality on their children and spouses and regarding the acquisition, change or retention of their nationality”*.²⁹

Recommendations

34. Based on the content of this submission, the following recommendations are made which we hope the Committee will consider in urging the Government of the Kingdom of Lesotho to ensure the right of every individual to acquire a nationality:
 - I. Take all necessary steps to break down barriers in accessing birth registration, including by allocating sufficient human and financial resources to the National Identity and Civil Registry Department, and ensure that the births of all children born in Lesotho are registered immediately.
 - II. Ensure non-discriminatory, comprehensive and consistent implementation of regulations relevant to birth registration, in particular of children born in rural areas, among indigenous populations and for children not born in hospitals, including by providing for free birth registration for those unable to pay the current costs and raising awareness about the importance of birth registration.
 - III. Undertake, as soon as possible, a full population census with a view to improving the available data on the population as a whole, in order have a

²⁶ <https://equalnationalityrights.org/the-issue/the-problem?highlight=WyJsZXNvdGh1l0=>.

²⁷ For a more elaborate outline of the effects of gender discrimination in nationality laws, see: <https://equalnationalityrights.org/the-issue/the-problem?highlight=WyJsZXNvdGh1l0=>.

²⁸

²⁹ *Human Rights Resolution on: The right to a nationality: women’s equal nationality rights in law and in practice* (2016), A/HRC/RES/32/7.

clearer picture of the extent of statelessness and access to nationality in the country.

- IV. Ensure that all national laws, regulations and policies are in line with Lesotho's obligations under international law and its Constitution, to ensure the right of every child to acquire a nationality, and prevent childhood statelessness.
- V. Prevent discrimination against children who are particularly vulnerable to statelessness due to their circumstances or discriminatory legal provisions, in particular, foundlings, children whose births have not been registered, children of Lesotho citizens married abroad and children of Lesotho mothers and foreign or stateless fathers.
- VI. Ensure that all foundlings or abandoned children found on territory are protected and that their right to acquire Lesotho nationality is guaranteed, in compliance with Article 7 CRC, SDG 16.9 and the 1961 Convention on the Reduction of Statelessness.
- VII. Establish a statelessness determination procedure and domesticate a legal framework for the protection of stateless persons, in line with the 1954 Convention, and in order to ensure that stateless persons enjoy their human right.
- VIII. Amend section 10 of the Citizenship Order which requires a stateless person be 18 years old and have legal status in Lesotho before making an application for nationality, and ensure that all stateless children, regardless of legal status, can apply for citizenship without discrimination.
- IX. Ensure that all Lesotho citizens who were themselves born abroad can pass on their Lesotho nationality to their children born abroad.
- X. Amend its nationality legislation and remove discriminatory provisions which allow Lesotho men to pass on their nationality to their spouses while Lesotho women cannot.
- XI. Consider amending discriminatory provisions and administrative regulations relating to family, marriage, divorce and share of marital property, with the aim to eliminating discrimination against women.